IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 201 OF 2002.

M/s. Suvarn Rajaram Bandekar,
Discretionary Trust, Suvarna
Bandekar Building,
Swatantra Path, Vasco-da-Gama,
Goa. ... Petitioner.

VERSUS

1. Dy. Collector & S.D.O.,
   Margao Sub-Division,
   Salcete, Margao, Goa.

2. Mamlatdar of Salcete,
   Margao, Goa.

3. Shri Armando Cardoso,
   resident of Sernabatim
   P.O. Colva, Salcete, Goa. ... Respondents.

Mr. J.E. Coelho Pereira, Senior Advocate with Mr. V. Korgaonkar, Advocate for the Petitioner.

Mr. S. Vahidulla, Addl. Government Advocate for the Respondents No.1 and 2.

Mr. Shantaram Naik, Advocate for the Respondent No.3.

CORAM: S. RADHAKRISHNAN, J.

DATE: 22ND AUGUST, 2002.

ORAL ORDER:

Heard learned counsel for the petitioner and the learned counsel on behalf of the Respondents No.1, 2 and 3.

2. By this petition the petitioner is challenging the Order dated 5th October, 2001 whereby the learned Deputy Collector has directed the Mamlatdar of Salcete to proceed with the inquiry under Section 8A of the Mundkars

(Protection from Eviction) Act, 1975.

3. The brief facts are that the petitioner herein had filed a suit against the respondent No.3 herein for possession of the property wherein the Civil Court had framed certain issues, in that Issue No.5 reads as under:-

> " Whether the defendant proves that he is a mundcar of the part of the suit property as mentioned in para 3 of the suit property ?

4. In view of the said issue, the Trial Court namely the Civil Judge S.D. had referred this issue to the learned Mamlatdar to decide this issue and send the finding to the Trial Court. In the said proceedings before the learned Mamlatdar, the respondent No.3 had filed an application under Rule 14(12) of the Goa, Daman and Diu Mundkars (Protection from Eviction) Rules, 1977 contending that apart from the petitioner namely M/s. Suvarn Rajaram Bandekar Discretionary Trust and another party namely Narayan Rajaram Bandekar Discretionary Trust who also has interest in the property ought to have been impleaded inasmuch as the property concerned was partitioned between M/s. Suvarn Rajaram Bandekar Discretionary Trust petitioner herein and Narayan Rajaram Bandekar Discretionary Trust. The contention of

respondent No.3 is that both M/s. Suvarn Rajaram Bandekar Discretionary Trust and Narayan Rajaram Bandekar Discretionary Trust before the partition, jointly owned the said property wherein the respondent No.3 claims to be a mundcar. The said Rule 14(12) of the Goa, Daman and Diu Mundkars (Protection from Eviction) Rules, 1977 reads as under :-

> " (12) The Mamlatdar may at any stage of the proceedings order that the name of any person to whom possession of the dwelling house or any part thereof may have been transferred or the addition of whom as a party appears necessary in order to enable the court effectually and completely to adjudicate upon the issues be added as an applicant or opponent as the circumstances of the case may require.
>
> Provided that no person shall be added as an applicant without his consent.

> Provided further that in respect of any person so added not being a transferee pending the case shall for the purpose of the Act, be deemed to have been instituted on the day, when his name was so added. "

5. The learned Mamlatdar had rejected the aforesaid application of the respondent No.3, holding that the respondent No.3 should approach the Civil Court to get the said party Narayan Rajaram Bandekar Discretionary Trust impleaded, and seek a reference.

6. Aggrieved thereby the respondent No.3 had approached the Deputy Collector by way of revision. The Deputy Collector by the aforesaid Order dated 5th October, 2001 found that the Mamlatdar had jurisdiction to decide whether Narayan Rajaram Bandekar Discretionary Trust is a necessary party or not and especially in view of Section 8A of the aforesaid Act and Rule 14(12) of the Goa, Daman and Diu Protection from Eviction Rules, 1977. The learned counsel for the petitioner contends that the Mamlatdar's order is absolutely right and this issue ought to be decided by the Civil Court, and the Deputy Collector had erred in passing the impugned order.

7. The learned counsel appearing for the petitioner strongly contended that this issue of adding the party, the forum to decide is the Civil Court and the learned Mamlatdar has no jurisdiction to decide the same. The learned counsel's contention is that in view of the fact that this is a matter which is being referred to the Mamlatdar, under Section 32(2) only the Civil Court could entertain the application whether a party is necessary or not and the Mamlatdar on his own cannot consider the same. In this context, provisions of Section 32(2) of the Goa, Daman and Diu Mundkars (Protection from Eviction) Act, 1975, reads as under :-

> " 32. Suits involving issues required to be decided under this Act. -
>
> (2) On receipt of such reference from the Civil Court, the Mamlatdar or the Collector shall deal with and decide such issues in accordance with the provisions of this Act and shall communicate his decisions to the Civil Court and such court shall thereupon decide the suit in accordance with the procedure

applicable thereof. "

8. Clause (2) of S.32 categorically mentions that on receipt of such a reference from the Civil Court, Mamlatdar or Collector shall deal with the said issue in accordance with the provisions of this Act and shall communicate his decision to the Civil Court and such court shall thereupon decide the suit in accordance with the procedure applicable thereof. In this context, it is relevant to note that under Section 8A of the Mundkar Act, the Mamlatdar has very wide powers as can be seen :-

> " Section 8A:- (1) Declaration of right.- If any person is entitled to any right under this Act he may move the Mamlatdar by an application for a declaration for such a right.
>
> (2) On receipt of such an application, the Mamlatdar may after holding such enquiry as may be prescribed, pass such order as he consider fit. "

9. Under the aforesaid facts and circumstances, it is clear that the direction of the Deputy Collector cannot be faulted inasmuch as to avoid multiplicity of proceedings the Collector has directed the Mamlatdar to decide this issue of adding the party in addition to the right claimed by the respondent No. 3. A bare perusal of Section 8A of Mundkar Act, read with Rule 14(12) of the Goa, Daman and Diu Mundkars (Protection from Eviction) Rules, 1977, clearly indicates that the Mamlatdar has adequate powers to decide whether a particular party is necessary or not.

10. I do not find any illegality or any error apparent on the face of the record in the aforesaid order. The Writ Petition is totally devoid of any substance and is accordingly dismissed.

S.RADHAKRISHNAN,J.

sl.